IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 16956 OF 2007
With
SPECIAL CIVIL APPLICATION NO. 16959 OF 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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VIJYABEN D/O RATNA RAMJI KHETANI & ANR. - Petitioner(s)
Versus
STATE OF GUJARAT & ANR. - Respondent(s)

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Appearance :
Shri K. R. Dave for Petitioner(s) : 1 - 2.
Ms. Bhavika Kotecha, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 30/10/2007

COMMON ORAL JUDGMENT

Both these petitions under Article 226 of the Constitution of India are filed by the petitioners seeking a direction against the

respondent-Authority for correction of the age of the petitioners and spelling of the name of petitioner No.1, as mentioned in the letter at Annexure-G to the petition, being Special Civil Application No.16956 of 2007.

2. It is the case of the petitioners that the marriage of the petitioners came to be registered on 7th March, 2005 and the memorandum was filed at Sr. No.111 of 2005 on Page 120 of Volume-47 of the register of marriage maintained under the Bombay Registration of Marriage Act, 1953, that some clerical mistakes had crept in the birth date of petitioner No.2, which is recorded as 19th May, 1959 and thus, on the date of registration, petitioner No.2 had completed 46 years, however, in the column of age of the bridegroom, it is shown as 44 years. Likewise, the birth date of petitioner No.1 is 3rd July, 1978 and on the date of the marriage, her age was 26 years. However, in the column of age of the bride, it is mentioned as 28 years. At the same time, the name of the petitioner, which spells as “Vijyaben”, has been incorrectly spelled as “Vijayaben” in the column of the name of the bride. The petitioners, therefore, addressed a letter to the Registering Officer to rectify the mistake on 2nd April, 2007, which was in the form of notice by the Advocate, along with relevant documentary evidence in the form of the school leaving certificate and certificate granted by the birth registering authority. However, the Sub-Registrar, Registrar of

Marriages, Bhuj, District-Kutch, *vide* letter dated 24th May, 2007, informed the petitioners that no correction can be made in the memorandum of marriage; it was, however, kept open for the applicants to file a new form of marriage after paying the requisite stamp duty and thereafter, it will be registered with the new number and date, etc. Being aggrieved by the said decision dated 24th May, 2007 rendered by the Sub-Registrar, the petitioners are before this Court.

3. Shri K. R. Dave, learned Advocate appearing for the petitioners, relying upon the provisions of the Births, Deaths and Marriages Registration Act, 1886, has contended that the Act provides for registration of marriage and section 28 of the Act provides for correction in the register and marginal correction can be made provided the Registrar is satisfied that there is a mistake. The learned Advocate appearing for the petitioners has also relied upon the provisions of the Bombay Registration of Marriages Act, 1953 and the Rules framed thereunder, and more particularly, Rule-(8).

4. Rule (8) of The Bombay Registration of Marriages Rules, 1954 is reproduced as under:

> *"8. Power of Registrar to require parties to rectify the defects in memorandum or to send it to Registrar having*

jurisdiction -

(1) If any memorandum received by a Registrar under section 5 or section 5-A is not accompanied by a duplicate thereof or the appropriate fee or if the memorandum is defective in any respect the Registrar shall require the parties to the marriage to furnish the duplicate or to pay the proper fee or to remedy the defect as the case may be within such time as may be specified by him.

(2) If the Registrar receiving such memorandum has no jurisdiction to receive the same he shall send the memorandum to the Registrar having such jurisdiction and to inform the persons who had sent or delivered the memorandum accordingly.

(3) If the Registrar receiving such memorandum has no jurisdiction but inadvertently files the same in the register maintained by him he shall send a certified copy thereof together with the copy of endorsement of filing recorded thereon to the Registrar having jurisdiction for the purpose of filing and inform the persons who had sent or delivered the memorandum accordingly. He shall then make a suitable endorsement on the memorandum indicating the action taken by him and cancellation of registration from his register.

(4) The Registrar on receiving a certified copy of the memorandum under sub-rule (3) shall file it in the register maintained by him without levying any additional fee and report the action taken by him to the Registrar General."

Thus, according to the learned Advocate for the petitioners, the Registrar of Marriages is empowered under the rule to correct the

mistakes crept in the memorandum of marriage. The learned Advocate further submitted that as per the requirement of sub-rule (1) of Rule (8) of the said Rules, although the petitioners paid the requisite fees along with an appropriate application with necessary proofs thereof for rectifying the defects, respondent No.2 refused to exercise the discretion under a wrong assumption that he has no power to correct any defect in the memorandum of marriage.

4.1 According to the learned Counsel for the petitioners, the correction sought for by the petitioners is with regard to the date of birth, number of years and spelling mistake in the name of the bride, and is marginal in nature. The learned Counsel for the petitioners, therefore, submitted that the respondents may be appropriately directed to correct the defects crept in the memorandum of marriage by allowing the petitions.

5. The learned AGP appearing for the respondent-Authority does not dispute the above proposition of law and it is submitted that the matter may be remanded to the respondent authority for passing appropriate order.

6. Having heard the learned Counsel appearing for the parties and on perusal of the record and considering the provisions of the

Bombay Registration of Marriages Act, 1953 and Bombay Registration of Marriages Rules, 1954, more particularly, the schedule which contains the form/memorandum of marriage as per the requirement of section 5 and rule 8, it is amply clear that the Registrar of Marriages has power to correct the defect provided the procedure laid down in the sub-rule (1) of Rule (8) is followed by the applicants and interest of justice would be served if the matter is remanded back to the respondent No.2-authority for considering the case of the petitioners afresh. In that view of the matter, the petitioners are hereby directed to approach the respondent authority along with an application for correction in the memorandum of marriage with necessary proofs thereof and requisite fees as prescribed under the law and on receipt of such application, the respondent-authority shall decide the application in accordance with law. It is expected of the concerned authority that it shall decide the application of the petitioners within a period of one month from the date of receipt of such application. The impugned communication is quashed and set aside. The petition is disposed of accordingly. Rule is made absolute to the aforesaid extent only. No order as to costs.

[Anant S. Dave, J.]

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